

PRODUCT GOVERNANCE

MIFID II				Scope				Type of financial instrument	Baseline Requirement (Legal)	Legal Guidance	What is new in MiFID II / MiFIR compared to MiFID I?
Article Number MiFID II / MiFIR	Legislative Provision (Level 1)	Article Number /Delegated Directive/ Delegated Regulation	Related technical standards and delegated acts (Level 2)	Guidelines by ESMA, EBA etc (Level 3)	Applicable to retail clients?	Applicable to professional clients?	Applicable to eligible counterparties?				

I. Product Governance - General

1	MIFID16.03	An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients.		<b>ESMA 2016/1436 (DRAFT)</b> Firms need to act in the clients' best interests during all stages of the life cycle of products or services.	✓	✓	✓	All	A firm needs to have effective organisational and administrative arrangements in relation to any situation that can give rise to a conflicts of interest (which includes those that arise in relation to product governance). See 'Conflicts of Interest' GAS.		It is an existing requirement under MiFID I to have organisational measures to manage conflicts of interest but its extension to product governance arrangements is new to MiFID II.	
2			MIFID.DEL.DIR.09.01-second subparagraph	Member States shall require investment firms manufacturing financial instruments to comply, in a way that is appropriate and proportionate, with the relevant requirements in paragraphs 2 to 15, taking into account the nature of the financial instrument, the investment service and the target market for the product.	<b>ESMA 2016/1436 (DRAFT)</b> 8. These guidelines should be applied in a proportionate manner, taking into account the nature, scale and complexity of a firm's business and the nature and range of financial services and activities undertaken.	✓	✓	x	All	The requirements on Manufacturers (see Section III below) should be appropriate and proportionate, taking into account: a) the nature of the financial instrument; b) the service offered (advised/non-advised, etc); and c) the target market for the product.		This is a new requirement under MiFID II
2a			MIFID.DEL.DIR.10.01-first subparagraph	Member States shall require investment firms, when deciding the range of financial instruments issued by themselves or any other firm and services they intend to offer or recommend to clients, to comply, in a way that is appropriate and proportionate, with the relevant requirements laid down in paragraphs 2 to 10, taking into account the nature of the financial instrument, the investment service and the target market for the product.		✓	✓	x	All	The requirements on Distributors (see Section IV below) should be appropriate and proportionate, taking into account: a) the nature of the financial instrument; b) the service offered (advised/non-advised, etc); and c) the target market for the product.		This is a new requirement under MiFID II
2b				<b>ESMA 2016/1436 (DRAFT)</b> 40. MiFID II product governance obligations are to be observed from the date of application of MiFID II (3 January 2018). The distribution, after 3 January 2018, of products manufactured before that date should be treated in the same manner as the distribution of products that have been manufactured by entities not subject to the MiFID II product governance requirements. However, a target market should be assigned by the manufacturer - when subject to MiFID II product governance requirements - to such products following the product review process that has to be conducted according to Article 16(3) of MiFID II.	✓	✓	x	All				This is a new requirement under MiFID II